

Managing the Global Response to Maritime Piracy



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Photos on the cover, clockwise from left:

- A Visit, Board, Search and Seizure (VBSS) team from the US Navy guided-missile cruiser USS *Gettysburg*—part of Combined Task Force 151 (CTF-151)—patrols the Gulf of Aden near a suspected pirate vessel
- A VBSS team from the US Navy guided-missile cruiser USS *Vella Gulf*—the flagship for CTF-151—apprehends suspected Somali pirates
- Maersk Line Limited container ship
- The HNLMS *Evertson*, FS *Marne*, and ROKS *Wang Geon* meet in the Gulf of Aden while engaged in anti-piracy operations for NATO, EUNAVFOR, and CTF-151
- An armed pirate keeps watch along the coastline at Hobyo town in northeastern Somalia

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The Atlantic Council Counter-Piracy Task Force (CPTF)*

The CPTF was a collaboration between the Atlantic Council's Michael S. Ansari Africa Center and its Brent Scowcroft Center on International Security. The mandate of the project was to produce actionable and policy-relevant analysis and recommendations on US approaches to the maritime piracy challenge in the complex international context. The five task force meetings included a standing group of high-level strategic actors—former US administration officials, distinguished members of academia, international organizations, and transportation/logistics industry executives—and occasional ad hoc expert invitees who convened to define the problem and develop courses of action for the formation of US policy.

Chair

Franklin C. Miller, Principal, The Scowcroft Group

Members

John B. Bellinger, III, Partner, Arnold & Porter LLP and Adjunct Senior Fellow, Council on Foreign Relations

Doug Brooks, President, International Stability Operations Association

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Daniel Whiteneck, Research Analyst, Center for Naval Analyses

Observer

Gary Rasicot, Director, Global Maritime Operational Threat Response Coordination Center, US Coast Guard

Guest Speakers

Doug Brooks, President, International Stability Operations Association

Stephen M. Carmel, Senior Vice President for Maritime Services, Maersk Line Limited

Rory Domm, Counselor, Delegation of the EU to the US

Colonel Hans Granlund, Naval and Assistant Defense Attaché, Embassy of Sweden

Captain Izuru Ikeuchi, Naval and Assistant Defense Attaché, Embassy of Japan

Brigadier General Jørgen Jacobson, Defense Attaché, Embassy of Denmark

Thomas Kelly, Principal Deputy Assistant Secretary, Political-Military Affairs, US State Department

Commander James Kraska, Howard S. Levie Chair of Operational Law, US Naval War College

Martin Murphy, Independent Scholar

Rear Admiral David Oliver, USN (Ret.), former COO, EADS North America

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* Participant affiliations are listed for identification purposes only, and participants do not necessarily subscribe to any of the views expressed in this Brief. Participants from the United States Government do not endorse the recommendations herein to the extent that they are inconsistent with United States Government policy.



Foreword

Modern-day pirates operating off the coasts of Somalia and West Africa endanger the global economy and pose a vexing security problem for the United States, its international allies, and the maritime industry. In 2011, Somali pirates extracted over \$100 million in ransoms from global shipping and insurance industries, and worse, held more than 1,200 seafarers hostage, often under inhumane conditions. But the cost of counter-piracy efforts has dwarfed the pirates' profits. The naval response alone cost the United States and its allies some \$1.27 billion in 2011. Self-protection efforts by the shipping industry may offer a sustainable and cost-effective alternative, but a set of enabling policies is urgently needed.

Over the past year, the Atlantic Council Counter-Piracy Task Force, a collaboration between the Michael S. Ansari Africa Center and Brent Scowcroft Center on International Security, brought together a standing group of high-level experts, including former US administration officials; distinguished members of academia and international maritime organizations; transportation/logistics industry executives; and occasional *ad hoc* experts to produce actionable and policy-relevant analysis and recommendations on US and international approaches to the maritime piracy challenge.

Task force members observed the shifting patterns of pirate attacks in each region and the impact of pirate attacks on neighboring littoral states and on the international market, including the shipping and insurance industries. The task force assessed the adequacy of current counter-piracy efforts, including the application of military power; domestic and international legal approaches; and diplomatic approaches including foreign assistance and capacity-building. The task force dialogue has been incisively captured in this report, which offers a strategic-level analysis of the maritime piracy problem and specific, actionable recommendations on US and international counter-piracy efforts.

I am deeply grateful for the leadership and thoughtful engagement of Frank Miller, Atlantic Council board director and principal of The Scowcroft Group, in chairing this effort. Our organization is fortunate to benefit from the wealth of experience that Mr. Miller brought to both the task force and the resulting report. I would also like to salute the prominent individuals who offered their analyses on the issue of counter-piracy to inform the direction and content of the report. While this report does not necessarily reflect their views or represent their opinions entirely, it benefited enormously from their insights and enjoys their endorsement.

I am very proud that this initiative was a collaborative effort between Barry Pavel and J. Peter Pham, directors, respectively, of the Brent Scowcroft Center on International Security and the Michael S. Ansari Africa Center, and their teams; it is an example of the cutting-edge, cross-program work that characterizes the Atlantic Council ethos. Finally, I want to recognize Ansari Africa Center Deputy Director Bronwyn Bruton and Assistant Director Kristen Smith who not only expertly managed this project, but also painstakingly captured the deliberations in this report.

I hope you will find this report lively, thoughtful, and provocative.



Frederick Kempe
President and CEO
Atlantic Council

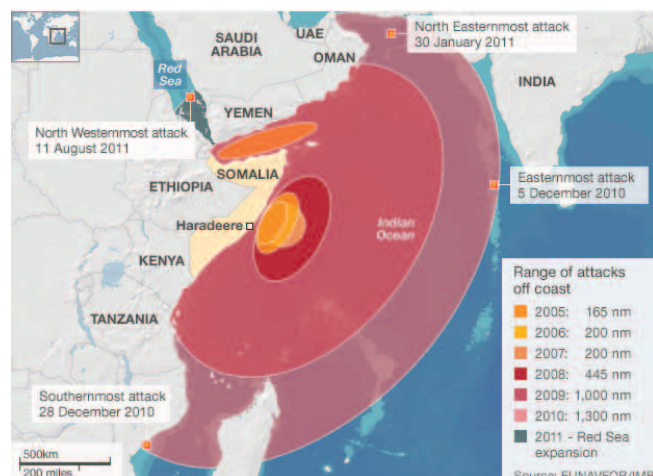
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The Context

Ninety percent of the world's freight is transported by sea. Our global economic stability depends on the reliable transport of goods—including medicine, food, energy and oil—across vital international shipping corridors. Pirate attacks off the coasts of Somalia and West Africa threaten these lanes and the flow of global commerce, and pose a direct threat to the security of the United States, its allies, the maritime industry, and the global economy.

Piracy is a product of many factors, including: poor governance; widespread official corruption; un-policed maritime domain; and lack of alternative economic opportunities on land. Counter-piracy efforts in both regions face several key challenges, including: the need for greater maritime domain awareness; insufficient knowledge of pirate financial networks; ineffective national and international frameworks for the prosecution of pirates; and flagging political will among regional and donor states to shoulder the continuing cost of naval operations.

Expansion of pirate operations



Source: EUNAVFOR

The Issue

Industry self-help efforts and the international naval forces have succeeded in reducing the rate of successful hijackings off the coast of Somalia. But off the coast of West Africa, the capabilities and range of pirates is growing, and the rate of successful attacks is escalating rapidly.

Is the current strategy to curtail maritime piracy “good enough”?

The presence of dozens of warships in waters off Somalia has deterred some pirate activity, but the pirates are surprisingly adaptable, and, assisted by modern communication networks that allow for the fast and easy exchange of information on effective criminal strategies, are taking more risks in response to the hardening of their targets. They have escalated their use of violence to capture and subdue crews.

The significant decline in the number of successful attacks off Somalia is mostly attributable to the shipping industry's implementation of a set of self-protection measures, known as the Best Management Practices for Protection against Somalia Based Piracy (BMP4s), and the use of private armed security teams on ships. In addition to the security advantage of using best management practices and armed security personnel there are financial incentives: insurance companies have cut premiums for ships with armed security by as much as forty percent. But because of the high cost of these teams, many small to medium-sized vessels as well as more modest regional operators cannot afford them, and are forced to transit high-risk waters unprotected. These vessels consequently account for two-thirds of all pirate attacks in the region.

The shipping industry's use of armed private maritime security companies (PMSCs) on board commercial ships is currently at the center of an international debate. There are no official US or international policies regulating how a

PSMC may train its guards, what weapons they can use, or what actions they may take against pirates. Unless the rules of conduct are standardized by an internationally recognized entity like the International Maritime Organization (IMO), self-protection efforts by the shipping industry will continue to be hamstrung by conflicting policies.

Background: Somali and West African Piracy

The anarchic territories of Somalia offer a safe haven for pirate networks, transnational criminal enterprises, and extremist groups. Since 2008, piracy off Somalia has evolved into a lucrative transnational criminal enterprise that impedes international and regional trade along the world's second busiest shipping corridor.

Lack of economic opportunity drives many Somalis into piracy. Money collected from ransom payments has given a boost to some coastal economies, often providing for entire communities, and entrenched the practice of piracy within Somali society. In the past five years, the number of Somali pirates has grown from fewer than a hundred to more than 3,000. Since 2008, Somali pirates have attacked more than 620 vessels, hijacked over 175 private and commercial ships, and held over 3,000 people from more than forty countries hostage.

The rate of attacks by Somali pirates declined significantly in the first six months of 2012. Only seventy attacks were reported, down from 163 during the same period in 2011, and only thirteen were successful. As of August 1, 2012, approximately 200 crewmembers on eleven vessels are being held hostage by Somali pirates.

Piracy off the coast of West Africa is not a new phenomenon. A few years ago, the waters off Nigeria were ranked the deadliest in the world and are now second only to Somalia; the International Bargaining Forum has categorized the waters off both coasts as a "High-Risk Piracy Area." Historically, attacks off West Africa have occurred close to shore in the form of armed robberies and cargo theft on smaller craft, but in the past year a strategic shift has occurred. Attacks have become more frequent, more violent, and are occurring farther out from shore. In the first six months of 2012, thirty-four attacks were reported, twenty-two of which were successful. That is more than double the number of attacks during the same time span in 2011.

A key distinction between West African and Somali piracy is that Somali pirates derive most of their profits from ransoms paid for captured crews and vessels, whereas West African pirates rapidly strip cargo (most commonly in the form of oil from tankers) and retreat from hijacked vessels. The West African scenario presents a much more dangerous situation for the crew, who may be killed incidentally without "cost" to the pirates. Though over a thousand people have been taken hostage by Somali pirates, only five are known to have been killed.

Many pirate attacks off the coast of West Africa, particularly those on off-shore oil platforms and pipelines, are intended as political protests over perceived injustices by the oil industry. The region is a source of high quality oil for the US and its influence on global energy markets is growing.

Attacks against the oil industry in West Africa and on oil tankers off Somalia can have a significant effect on global oil prices and therefore have serious implications for major economies around the world. In April 2008, oil prices hit a record high of \$117.76 per barrel following a rocket attack on a Japanese oil tanker off the coast of Yemen and two attacks on oil pipelines in West Africa by a Nigerian militant group. Insurgent attacks have cut Nigeria's oil output by an estimated twenty-five percent since 2008. (In 2009, a peace accord between the Nigerian government and several Nigerian militant groups granted amnesty to more than 26,000 former militants and produced a brief lull in the attacks, but they resumed in 2010.) David Goldwyn, a former US State Department coordinator for international energy affairs, testified before Congress that, "If Nigeria was to produce oil at capacity, it would play a major role in helping to lower and stabilize world oil prices."¹

Counter-Piracy Initiatives: The Horn of Africa

The US Response

The United States did not have a naval presence engaged in anti-piracy operations off the Horn of Africa until early 2006, when US Navy vessels under the auspices of US Central Command's Combined Maritime Forces (CMF), began patrolling the waters off Somalia following a series of successful pirate attacks on commercial ships and United Nations aid ships. In March 2006, Somali pirates opened fire

¹ David L. Goldwyn, testimony before the Senate Committee on Foreign Relations' Subcommittee on African Affairs, Washington, DC, September 24, 2008.

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on two US Navy vessels; no Americans were wounded and twelve pirates were captured. In 2009, Combined Task Force 151 (CTF-151) was established under the auspices of CMF. CTF-151² has grown into a twenty-six national counter-piracy naval partnership in the Arabian Gulf, Gulf of Aden, Red Sea, Arabian Sea, and Indian Ocean.³

The Bush administration laid the foundation for CTF-151 in 2007, when it adopted the *Policy for the Repression of Piracy and Other Criminal Acts of Violence at Sea*. In December 2008, the US National Security Council released *Countering Piracy off the Horn of Africa: Partnership and Action Plan*, which offered a blueprint for repressing piracy in the interests of the global economy, maritime security, Somalia, and the regional states. The Obama Administration later endorsed and enhanced the strategy, adding an initiative to provide more assistance to Somalia's Western-backed Transitional Federal Government; in a 2012 letter to Congress, President Obama stated that Somalia poses "an unusual and extraordinary national security threat to the United States," citing piracy and terrorism concerns.

US counter-piracy operations off Somalia escalated following the hijacking of the *Maersk Alabama* by four Somali pirates on April 8, 2009. The majority of the ship's crew was able to seek refuge in the ship's safe room, also called the "citadel," but the pirates were able to kidnap the captain before retreating to their lifeboat and demanding a two million dollar ransom. On April 12, 2009, after a four-day standoff between US naval forces and the pirates, President Obama authorized military action after determining the hostage's life was in imminent danger. A team of US Navy SEALs conducted the operation, firing three simultaneous shots, killing the three pirates onboard the lifeboat. Not long after the *Maersk* hijacking the US Coast Guard issued a directive providing counter-piracy guidance, including mandatory measures for ships transiting high-risk waters off the Horn of Africa. On September 9, 2009, US Marines successfully retook a second vessel hijacked by Somali pirates, the *Magellan Star*. The operation was the first time US Marines had boarded a ship under pirate control.

International Efforts

More than thirty countries have deployed naval assets to conduct counter-piracy operations off the Horn of Africa and in the Gulf of Aden since 2006. On any given day, the waters off the Horn of Africa are patrolled by up to forty

warships and maritime surveillance aircraft provided by three international maritime task forces: the European Union Naval Force (EU NAVFOR) Somalia Operation ATALANTA; the NATO Operation Ocean Shield (TF-508); and CTF-151.

These forces are simultaneously engaged in counter-piracy operations across most of the Indian Ocean, the Gulf of Aden, and the Somali basin. As of March 23, 2012, the EU has expanded Operation ATALANTA's area of operations to include Somali coastal territory and internal waters, as well as land operations. (Unfortunately, this more aggressive counter-piracy strategy, coupled with strained resources, has left Operation ATALANTA unable to fulfill the other part of its mandate—to provide adequate protection for WFP and African Union peacekeeping supply shipments. Recently, vessels delivering WFP aid have had to hire private security teams for protection.)

On May 15, 2012, EU NAVFOR conducted its first airborne strike against Somali pirate operations on land. Helicopter gunships attacked a known pirate haven on the central Somalia coast near the village of Harardhere, destroying five speedboats. Surveillance showed that no Somalis ashore were injured as a result of the action.

While naval efforts in the region have been somewhat successful in deterring pirate attacks, the pirates' expanding area of operations—more than 2.5 million square miles—is simply too large for effective naval patrols. But international naval forces play a key role in tracking vessels transiting the Gulf of Aden and providing updated threat assessments to the maritime industry. The efforts of EU NAVFOR's Maritime Security Centre-Horn of Africa (MSC-HOA) have been particularly successful: more than 10,000 shipping firms have registered with MSC-HOA and evidence suggests that the pirates are shifting their operations away from the Gulf of Aden to avoid the significant number of well-informed naval assets in the area.

The Shared Awareness DE-confliction initiative (SHADE, launched in 2008) and the Contact Group on Piracy off the Coast of Somalia (CGPCS, launched in 2009) have also been credited with helping stimulate action and coordination of policies among force-providing nations, the international community, and the private sector. The CGPCS in particular has served as a communication platform for more than sixty nations and international organizations, including the African Union, EU, IMO, and maritime trade organizations.

2 CTF-151's sole mission is to conduct anti-piracy operations off the Horn of Africa and in the Gulf of Aden's Internationally Recommended Transit Corridors (IRTC), an area encompassing 2.5 million square miles of international waters. Naval forces of more than twenty-six nations have participated in CTF-151. Several countries including China, India, Japan, and Russia have counter-piracy assets in the region but are not part of CTF-151 operations. They do however have open lines of communication (and regularly meet at the operational level) to ensure effective cooperation and coordination of counter-piracy operations.

3 CTF's other two task forces are CTF-150 (maritime security and counter-terrorism) and CTF 152 (Arabian Gulf security and cooperation).

The IMO has been a strong force in the counter-piracy effort. In January 2009, the organization sponsored a meeting in Djibouti at which seventeen regional governments adopted the Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden (also referred to as the Djibouti Code of Conduct, DCoC). The DCoC is a linchpin of counter-piracy efforts, because it successfully facilitates training programs and provides of piracy updates to naval forces and the maritime industry via multiple intelligence centers. But its progress has been slow, impeded by a budget of only \$9 million and the lack of a political oversight body.

Somalia is a weak state in a strategically essential location. Heavy traffic through the Gulf of Aden's vital trade routes provides a steady stream of targets, while lack of alternative economic opportunities continues to drive many Somalis into piracy. Until both governance and economic conditions improve, pirates will continue to find willing recruits and sanctuary in Somalia, and the country will attract international criminals and radical extremists. Any effective strategy to combat Somali piracy in the long-term will require the international community to engage in extensive development efforts on land.⁴ But efforts on this front are sorely lacking, suggesting that piracy off the coast of Somalia will be a recurring problem.

Counter-Piracy Initiatives: West Africa

The US government is broadly engaged in maritime security efforts in West Africa. The US Department of State, Department of Defense, Department of Homeland Security, and Department of Justice conduct security assistance programs in West Africa, in coordination with the UN, the IMO, and the IMB, and with European and African partner nations. In 2007, a new combatant command, US Africa Command (AFRICOM), was launched to oversee US forces on the continent and resolve armed conflict through building partner nation capacity. One of AFRICOM's largest initiatives, the Africa Partnership Station (APS), sponsors military and nonmilitary programs designed to increase the capacity of African navies. The US Coast Guard administers the African Maritime Law Enforcement Partnership (AMLEP) out of APS that assists West African host nations in developing the capabilities (search and seizure, arrest, and detention) to patrol their own waters and act when a maritime crime has been committed.

While APS has done good work—to date it has engaged with twenty-one nations and trained more than 7,700 maritime security professionals—its reach is limited due to the region's lack of maritime security forces and legal structures that are necessary to prosecute pirates. Numerous conferences on regional maritime security cooperation have provided a platform for dialogue between African Union Gulf of Guinea Commission, Economic Community of West African States (ECOWAS), the Maritime Organisation of West and Central Africa (MOWCA), EU, US, and various partner nations. But while some states in the region have expressed their willingness to partner on these initiatives, progress has been piecemeal, uneven, and slow, as regional cooperation and coordination continue to be hampered by mistrust, resource shortages, and lack of political will.

Prosecution

The task of prosecuting pirates is extremely complex and presents a burden that few countries are willing to shoulder. The most immediate legal concern—over where to prosecute and then incarcerate convicted pirates—is complicated by multiple jurisdictional questions that arise based on the location of the attacks, the nationalities of crew members, and the countries of registry and/or ownership of any seized vessels.

Because Somalia lacks a reliable legal system, the international community has had to assume responsibility for pirate prosecutions. Since 2006, there have been approximately 1,100 prosecutions of Somali pirates in twenty different countries including the United States, France, and Germany. But the myriad of unresolved legal issues surrounding pirate prosecution has led to the release of hundreds of Somali pirates before even getting to trial. Transfer of pirates to the United States and European nations has proved to be a logistical nightmare, and many nations have been reluctant to prosecute pirates because of the costs associated with a long post-conviction imprisonment, the fear that the pirates may ultimately request asylum in their country, and, in some cases, limited prison capacity.

Several collaborative efforts among East African states, the US, UK, France, and other international organizations to increase national and regional legislative capacity have produced results. Kenya, Tanzania, and the Seychelles have successfully prosecuted pirates. The US provides maritime assistance to the Kenyan navy and has delivered groups of pirates for trial to Kenya's new high-security court in Mombasa. Kenya currently imprisons the

4 J. Peter Pham, "Putting Somali Piracy in Context," *Journal of Contemporary African Studies* 28, no. 3 (July 2010): 325-341.

largest number of pirates, housing 140 of the 750 pirates imprisoned worldwide. Construction is underway on a joint UK -Seychelles initiative called the Regional Anti-Piracy Prosecutions Intelligence Coordination Center (RAPPICC), which aims to be a “one stop shop” for intelligence gathering, investigations, and prosecution of pirates and pirate financiers. Law enforcement agencies from the United States and some other countries are also now using INTERPOL’S piracy database, which collects information related to piracy suspects and hijackings and has been credited with contributing to the increase in pirate prosecutions worldwide.

But the increase in prosecutions does not appear to be having as strong a deterrent effect as predicted. Prosecution poses little disincentive to impoverished, heavily-armed men in a conflict-ridden territory. The US government has recognized that while prosecuting and incarcerating pirates remains essential, the pirates captured at sea are often “disposable” low-level operatives that are easily replaced. Thus it has altered its strategic approach to focus on identifying and tracking the illicit financial flows of pirate “kingpins” and financiers.

The ability of West African countries to conduct counter-piracy operations and arrest pirates is limited due to insufficient domain awareness, inadequate early warning and intelligence capabilities, deficient response capability, and the inability to sustain patrol operations far out at sea. Legal frameworks do exist in most West African nations but in almost all cases, the legislative, administrative, and judicial systems are weak and antiquated and in need of significant modernization.⁵

The UN has provided maritime assistance in the Gulf of Guinea through multiple initiatives and training programs designed to assist states with creating sustainable law enforcement structures, including a series of workshops and training courses on various aspects of maritime safety and security. The UN has also established an anti-piracy trust fund to assist states in the region build up their judicial capacity to prosecute pirates.

Shipping Industry Self-Defense

Over the past year, efforts by the private sector have dramatically reduced the number of successful Somali pirate attacks.⁶ International naval patrols have certainly helped but the decline is primarily attributable to widespread implementation of BMP4s,⁷ and the use of private armed security teams on board ships.

The BMP4s identify a variety of self-protection measures to assist ships in avoiding and preventing pirate attacks in high-risk waters through the Gulf of Aden, Somali Basin, and Indian Ocean. These measures include maintaining a 24-hour watch; employing physical barriers with netting and razor wire; proceeding at full speed in high risk areas and engaging in evasive maneuvering; and securing the crew in a safe-room where they are protected from pirates but still able to control the vessel. As Somali pirates seized the *Magellan Star*, for example, the ship’s crew sent out a message that they had been attacked and then retreated to a citadel, enabling naval forces to retake the ship with the use of force.

The United States requires all US-flagged vessels sailing in designated high-risk waters to take these additional security measures but an estimated 20 percent of all vessels transiting the waters off the Horn have not implemented BMPs. But an estimated 20 percent of all vessels transiting the waters off the Horn have not implemented BMP4s. And although ships employing best management practices have largely avoided capture by pirates, the guidelines do not guarantee complete security. Despite the significant naval presence in the region, the pirates’ area of operations is so large that naval vessels may not be able to respond quickly enough to prevent an attack and arrest pirates or rescue a crew trapped in a citadel. Because of this, ships have begun to employ private armed security teams to guard their vessels.

As of August 2012, more than 140 PMSCs specializing in anti-piracy operations are operating off the coast of Somalia. Most have been launched since January 2011. The majority provide armed security protection to ships transiting waters off Somalia. The use of armed guards on ships has been dubbed the “100 Percent Solution” because to date there has not been a single successful attack on a ship carrying

5 J. Peter Pham, “West African Piracy: Symptom, Causes, and Responses,” in *Global Challenge, Regional Responses: Forging a Common Response to Maritime Piracy—Selected Briefing Papers*, ed. Stephen Brannon and Taufiq Rahim (Dubai: Dubai School of Government, 2011), 29-32.

6 Some credit an initiative to establish a marine anti-piracy force in Puntland with also contributing to the reduction in successful pirate attacks, but others question whether there is sufficient data to warrant the conclusion and also point to questions about both the legality of the undertaking under the current international sanctions regime on Somalia and the potential for unintended, but foreseeable, negative impact of arming another ad hoc group in that volatile region.

7 There is a standard set of BMPs for the shipping industry around the globe, but the specific set of practices pertaining to shipping traffic off the coast of Somalia are referred to as the BMP4s.

armed guards. In almost all instances of an attempted attack, pirates have abandoned their assault when they became aware of the presence of armed security personnel.

The performance and professionalism of the PMSCs has generally impressed the United States and its international partners, but the use of private armed guards remains controversial. While an international code of conduct governs the activities of land-based private security companies, there is no parallel document regulating the conduct of PMSCs in the maritime domain. The lack of a standard set of international regulations has led to conflicting interpretations of the right to use force, and differing interpretations of the powers and legal responsibility of the teams when in international waters. There is also concern that the relatively new, poorly regulated industry could endanger civilians, including innocent Somali fishermen, and evolve towards lowered security quality as shipping clients cut costs or spark a mini-arms race between pirates and PMSCs. The IMO's Maritime Safety and Security Committee has developed interim guidelines for the use of armed security on ships but maintains its position that it does not believe seafarers should be armed, and that it is the responsibility of the flag state to have their own regulations in place regarding the use of armed personnel.

There is also the question of the chain of command. The captain of a vessel is responsible for the safety and security of the ship, crew, and cargo, and should retain control of and authority over his vessel, crewmembers, and embarked security personnel at all times. Any use of force employed should be subject to the direction of the vessel master. There is a semantic debate over whether an armed security team should be considered "crew," and answerable to the captain, or whether such teams should be treated as autonomous military units. This debate over definitions obscures a more practical problem: hired gunmen who work for a security company are likely to follow their organic chain of command, and much less likely to listen to a ship's captain, when they come under fire.⁸

Another issue concerns weapons licensing and the movement of armed teams through third countries and international canals. National legislation is varied throughout the world on the transportation of firearms through international canals, presenting numerous challenges to vessels on international voyages with multiple ports of call. The US International Traffic in Arms Regulations (ITAR) control the export and temporary import of US defense articles and services covered by the United States Munitions

List. Although the State Department has encouraged countries to permit commercial vessels to carry armed security teams, ITAR does not allow ships to have weapons on board while transiting international canals. This directly conflicts with US export policies that do not allow ships to remove weapons or hold them in an armory overnight because it is considered to be an arms export to a foreign country. The United States is working with the CGPCS and the IMO to establish a legal framework that resolves these licensing issues and enables smooth transits for ships with armed security and weapons. In the meantime, shipping companies have been required either to awkwardly disembark their teams before entering the canals, or proceed in violation of the law.

To get around the weapons licensing issues, private security firms are beginning to use armed patrol boats as an alternative protective measure. These boats serve as a more aggressive deterrent to pirates by establishing a protective ring around a ship that can confront any approaching vessel. The use of these vessels rather than armed teams on board eliminates licensing issues and allows ships to maintain their right to innocent passage through territorial waters.

Ransoms and Insurance

Although the number of successful pirate attacks off Somalia decreased in 2011, ransom payments have risen. They now average four million dollars per ship but have been as high as twelve million dollars. In 2008, the Joint War Committee of Lloyd's and the International Underwriters Association designated the waters off the Horn of Africa a "war-risk" zone, causing insurance premiums to spike, in some cases from as little as five hundred dollars per ship, per voyage, to \$150,000 per ship, per voyage. Rather than pay the much higher premiums, many shipping companies have chosen to transit the waters of the Horn without insurance, gambling on the hope they will not be attacked. Many companies have even come to regard the occasional ransom payment as an acceptable cost of doing business—one that is cheaper than insurance and less likely to expose the company to lawsuits from the crew (who may otherwise be detained for months during insurance company negotiations over the ransom price).

In addition to the security advantages, the rising cost of insurance has been a major factor in the increase of PMSCs onboard ships. Insurance companies offer significantly lower premiums to ships employing PMSCs, often cut by as much as forty percent. But, because of the high cost of

⁸ This question does not arise if the team is a Vessel Protection Detachment provided by a flag state; the captain has no jurisdiction over the actions of such a unit.

Managing the Global Response to Maritime Piracy

these teams, many small to medium-sized vessels as well as more modest regional operators cannot afford them, and are forced to transit high-risk waters unprotected. These vulnerable vessels consequently account for two thirds of all pirate attacks in the region.

Ship owners face a dilemma when crews are taken hostage. The practice of paying ransoms ensures that pirate attacks will continue, but the industry has no other means of freeing captured crew. Some international officials, including several in Somalia's transitional government, have expressed support for making ransom payments illegal, on the premise that it is a low-cost solution for governments that would eliminate the incentives for pirate attacks and prevent the risk of financing terrorist activity. This position has been met with protest from many in the insurance and ship-owning sectors, who claim that illegalizing ransoms would deter seafarers and trade, result in much higher costs for the shipping and insurance industries, and would shift insurance demand to Asian markets, drive payments underground, and expose hostages to even greater personal risk.

Counter-Piracy Task Force Recommendations

The following recommendations result from a series of meetings of the Atlantic Council's Counter-Piracy Task Force and provide actionable suggestions to improve US and coalition counter-piracy efforts off the coast of Somalia and West Africa.

- A universal definition of the crime of piracy and standard for jurisdictional authority, law enforcement measures, and consequences must be agreed upon. Establishing an international framework is a vital precondition for the more difficult task of ensuring that individual states have all the necessary legal structures and procedures in place to prosecute pirates.
- The international community must work to improve the legislative and judicial capacity of the "Puntland," "Mudug," and "Galmudug" territories of Somalia, so that pirates can be prosecuted and incarcerated in their districts of origin. Policymakers should resist the temptation to "dump" pirates on the relatively functional, but separatist, region of Somaliland, which—recognizing the cost and dangers associated with the mass incarceration of pirates—has deliberately written its counter-piracy legislation in a manner that deters the international community from prosecuting pirates in that region.

- Due to the numerous legal complications that can arise when transporting pirates to shore (including evidence collection, human rights violations, claims for asylum, and habeas corpus), the international community should consider using floating trial teams, followed by a designated place of consignment, which would present fewer legal difficulties.
- Policymakers should recognize that pirates may perceive detention as an opportunity rather than a penalty (a prison sentence in compliance with international human rights norms ensures food and shelter, and if carried out in a third country, may offer an eventual prospect of asylum), and should carefully weigh the costs of constructing prisons against the potential deterrent effect.

Vessel self-protection measures taken by ships using best management practices and employing PMSCs have been very successful in reducing the number of successful hijackings, and are a cost-effective solution for the maritime industry, but numerous issues surrounding these measures require clarification.

- The State Department needs to reconcile its pro-armed guard policy with its export control policy. It should consider adding an exception for contracted armed guards on vessels in the process of transiting high-risk waters into the law.
- The IMO does not support the use of armed security personnel on merchant ships, but has responded to the absence of any existing international guidelines by releasing an interim "code of conduct." Major flag ships should be encouraged to adhere to the interim guidelines established by the IMO, in hopes that this will establish a *de facto* standard of conduct that can be implemented by individual states and smaller shipping lines, and eventually formalized into an official policy under the auspices of the IMO or another international regulatory body.
- Increased communication, intelligence sharing, and coordination between PMSCs and international naval forces off Somalia is necessary. Through intelligence sharing, PMSCs can assist navies to improve their maritime situational awareness in high-risk waters. Navies can also provide PMSCs with up to date intelligence on pirate activity that will enable ships transiting high-risk waters to change course and evade pirates.

- The majority of vessels that are successfully hijacked by pirates do not employ BMP4s. If all ships transiting the region were to employ BMP4s, the rate of hijackings would decline so significantly that it is possible that pirate activity off the Horn of Africa would cease to be profitable. Industry failure to adopt BMP4s effectively enables the cycle of piracy to continue. Significant fines should therefore be levied on vessels that do not adhere to the guidelines. A trust fund and training program should also be established to provide smaller vessels with the funds and capacity to adhere to the BMP4s if it is determined they do not have the capacity to do it themselves.
- If the drop in successful piracy attacks off Somalia results in a reduction of naval forces and reduced BMP4s applications, then piracy could be easily reinvigorated. It is important for the US, international community, and maritime industry to continuously monitor pirate activity.

While the physical presence of naval assets off the coasts of West Africa and Somalia acts as a deterrent, the ability of regional nations to counter piracy is limited by insufficient domain awareness; inadequate early warning and intelligence; deficient response capabilities; and the inability to effectively patrol high-risk waters due to the sheer size of the area.

- It is important to incorporate rigorous coast guard training into local counter-piracy initiatives. In West Africa, in collaboration with AFRICOM, the US Navy has taken the lead in conducting maritime security training programs for partner nations. A number of these training programs do teach coast guard operations, but traditional navy strengths lie in patrolling deep water and maintaining national defense. Coast guard training is focused on developing adequate maritime domain awareness and the capacity to detect and capture maritime criminals. The US Coast Guard has conducted *ad hoc* training for Somali and West African forces, but the Coast Guard's resources are stretched thin; participation needs to be expanded and regularized.
- The IMO and MOWCA launched a joint initiative in 2006 to establish a sub-regional coast guard network, a center for information and communications, and a regional maritime fund to counter piracy. While an excellent sign of cooperation, the effort still remains in the conceptual stage. The US and international assistance efforts should include planning support,

asset donation, and training to bring this network to fruition as swiftly as possible. This network should be established under the auspices of the African Union/ECOWAS Standby Force.

- An important component of the Djibouti Code of Conduct is the development of a Somali coast guard. Since 2009 more than 500 Somali soldiers have received coast guard training in Djibouti under the auspices of the IMO and EU. The retention rate for these forces is low, and none of the trainees are currently employed as coast guard. This training should be directed instead towards bolstering regional maritime security forces in Djibouti, Kenya, the Seychelles, Somalia, and Tanzania.
- Participating nations have recognized the important contributions of the Contact Group on Piracy off the Coast of Somalia, an international forum that has brought together more than sixty countries and international organizations to discuss and coordinate counter-piracy operations off Somalia, but the program is constrained by its small budget of less than \$10 million and lack of a permanent structure. Efforts to strengthen and institutionalize the group should be considered.
- The United States and international community should continue to utilize the multiple international tracking and identification systems available. But human intelligence on the ground in West and East Africa is lacking and must be increased to yield a better understanding of the piracy gangs and the underlying social and economic networks enabling them.

The illicit financial flows of pirate networks need to be identified and tracked.

- By tracking financial contributions and supply lines to pirate networks, the United States may be able to identify and apprehend the leaders and international financiers of pirate operations and stunt the financial growth of pirate networks. A successful model to study is that of the US operation in Colombia that led to the apprehension of several drug cartel lords. In addition to providing ships with advice on how to avoid a pirate attack, the RAPPICC is providing information that can assist in the identification and tracking of pirate financiers.

- The international community should strongly discourage but not legalize the payment of ransoms. The United States has a long-standing policy of opposing any concession to hostage-takers, including ransom payments, and has invited flag ships, ship owners, and private parties involved in a pirate incident resulting in a hostage crisis to seek assistance from the US government. More importantly, the United States has reliably deployed naval assets, including Navy SEALs and other special operations forces to conduct rescue missions for American hostages. Other countries, however, are quick to pay ransoms. This further institutionalizes the practice of hostage-taking for profit and promotes its expansion as a criminal enterprise.⁹ If nations are not willing to free hostages through state action, banning ransoms could condemn hostages to indefinite detention or death, as there is currently no other way that hostages can be released.

Achieving greater security and stability in the maritime domain depends largely on political development and sustainable economic growth in both regions. In West Africa, US national security interests depend heavily on whether Nigeria will continue a downward spiral into corruption, criminality, radicalization, and violence, or, with the support of the US and international community, sets itself on a trajectory towards better governance, stability, and prosperity.

- The US-Nigeria Bi-national Commission was launched by Secretary Clinton in April 2012 to assist Nigeria in achieving good governance and transparency, and to take a regional leadership role on energy reform and investment and agricultural development. The US must make better and more regular use of this forum to promote partnerships with Nigeria, and to engage with post-conflict nations and new democracies in the region to ensure that they serve as anchors for regional stability.
- While Nigeria will play an important role in any solution to piracy and other maritime challenges in West Africa, other littoral states, many of which are deeply suspicious of their larger neighbor, must also be involved in the effort. The United States and

the international community should seek to strengthen sub-regional bodies and technical organizations, such as ECOWAS, which promote maritime domain awareness, increase response capabilities, and foster regional cooperation and integration.

Conclusion

States, multilateral institutions, and the maritime industry have devoted extensive resources to counter-piracy efforts off of the coasts of Somalia and West Africa, and have achieved some success in reducing the rate of successful pirate attacks. This success is a product of vigilance, but naval operations can only go so far. Piracy off the coast of West Africa is increasing, and international counter-piracy efforts have failed to address the root causes of the pirate problem in Somalia: the lack of governance and economic opportunity on land. Under pressure from PMSCs and naval forces, Somali pirate networks may go dormant, but because they are linked to the clan system they are unlikely to be dismantled. It is therefore probable that pirate “epidemics” off the coast of Somalia will recur if and when naval assets are withdrawn and shipping companies let down their guard.

International counter-piracy efforts have so far been focused on containing rather than solving the problem of piracy off the coast of East Africa. An effective strategy for resolving the threat of piracy in the long-term will require the international community to engage in extensive development efforts on land; to work with African partner nations to increase the capacity and capabilities of national and regional governments; and to provide viable economic alternatives to would-be pirates. Many of these strategies are already underway in West Africa, where the United States government in particular has undertaken a broadly holistic approach to maritime security. The security and political situation in Somalia has so been far less conducive to a land-based approach: but it is certainly within the US interest to explore development- and governance-based counter-piracy initiatives as circumstances allow. Unless the international community becomes willing to invest in a land-based solution to Somalia’s dire political, economic, and humanitarian distress, the plague of Somali piracy will continue.

9 “Expanding Private Sector Partnerships Against Piracy,” Remarks by Andrew Shapiro before the US Chamber of Commerce, March 13, 2012, <http://www.state.gov/t/pm/rls/rm/185697.htm>

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